

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

JAMES COMFORT,

Petitioner,

v.

**9:10-CV-677
(FJS/ATB)**

THOMAS LAVALLEY,

Respondent.

APPEARANCES

OF COUNSEL

**JAMES COMFORT
03-B-1210**

Clinton Correctional Facility
P.O. Box 2001
Dannemora, New York 12929
Petitioner *pro se*

**OFFICE OF THE NEW YORK
STATE ATTORNEY GENERAL**

120 Broadway
New York, New York 10271
Attorneys for Respondent

THOMAS B. LITSKY, AAG

SCULLIN, Senior Judge

ORDER

Petitioner filed his petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 on June 10, 2010. *See* Dkt. No. 1. Respondent filed an answer and a memorandum of law on November 24, 2010. *See* Dkt. No. 10. Petitioner filed a traverse on January 10, 2011. *See* Dkt. No. 16. On June 9, 2011, Magistrate Judge Baxter issued a Report-Recommendation in which he recommended that this Court deny and dismiss the petition and deny a Certificate of Appealability. *See* Dkt. No. 17 at 18. Plaintiff filed objections to those recommendations. *See*

Dkt. No. 18.

"When a *specific* objection is made to a portion of a magistrate judge's report-recommendation, the Court subjects that portion of the report-recommendation to a *de novo* review." *Trombley v. O'Neill*, No. 8:11-CV-0569, 2011 WL 5881781, *2 (N.D.N.Y. Nov. 23, 2011) (citing Fed. R. Civ. P. 72(b)(2); 28 U.S.C. § 636(b)(1)(C)). "To be 'specific,' the objection must, with particularity, 'identify [1] the portions of the proposed findings, recommendations, or report to which it has an objection and [2] the basis for the objection.'" *Id.* (quotation and footnote omitted). Where a party makes no objection, or only a general objection, to a portion of a magistrate judge's report-recommendation, the court reviews that portion for "clear error." *See id.* (citations omitted). After completing the appropriate review, "the Court may 'accept, reject, or modify, in whole or in part,'" the magistrate judge's findings and recommendations. *Linares v. Mahunik*, No. 9:05-CV-625, 2009 WL 3165660, *10 (N.D.N.Y. Sept. 29, 2009) (quoting 28 U.S.C. § 636(b)(1)(C)).

The Court conducted a *de novo* review of Magistrate Judge Baxter's Report-Recommendation in light of Petitioner's objections. Having completed that review, the Court hereby

ORDERS that Magistrate Judge Baxter's June 9, 2011 Report-Recommendation is **ACCEPTED in its entirety** for the reasons stated therein; and the Court further

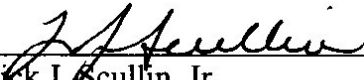
ORDERS that Petitioner's petition is **DENIED and DISMISSED**; and the Court further

ORDERS that a Certificate of Appealability will **not** issue in this case because Petitioner has not "made a substantial showing of a denial of a constitutional right." 28 U.S.C. § 2253(c)(2); and the Court further

ORDERS that the Clerk of the Court shall serve a copy of this Order on the parties in accordance with the Local Rules.

IT IS SO ORDERED.

Dated: April 2, 2012
Syracuse, New York



Frederick J. Scullin, Jr.
Senior United States District Court Judge